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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,001	03/16/2005	Katsumi Matsumoto	11A 3689 PCT	9585
3713	7590	01/14/2008	EXAMINER	
QUINN EMANUEL KODA & ANDROLIA 865 S. FIGUEROA STREET, 10TH FLOOR LOS ANGELES, CA 90017			MORAN, KATHERINE M	
			ART UNIT	PAPER NUMBER
			3765	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

CT

<b>Office Action Summary</b>	Application No. 10/526,001	Applicant(s) MATSUMOTO ET AL.	
	Examiner Katherine Moran	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 November 2007.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,11-14,24 and 26-31 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1,2,11-14,24 and 26-31 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 12 April 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's amendment of 11/2/07 has been received and reviewed. Applicant amended claims 1, 11-14, 26, and 28, submitted new claims 29-31, and cancelled claim 20. Claims 1, 2, 11-14, 24, and 26-31 are pending. It is noted that new claim 29 includes an amendment. This appears to be a typo.

### ***Specification***

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claims 11, 13, 14, and 30 recite a single hole provided in the first end of the belt corresponding to the single projection on the ends of the eye cup portions.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter of claim 31 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

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prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 2, 11-14, 24, and 26-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 29 recite that each belt has a soft portion at a second end. However, Applicant's specification and

drawings disclose the soft portion as reference number 10 and pg. 7 recites that "the other area of the belt 3 is formed with the soft portion 10." The specification does not specifically disclose that a soft portion is at the second end of the belt.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 11, 12, 24, and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsubooka et al. (Tsubooka, U.S. 6,460,196) in view of Wu et al. (Wu, U.S. 6,092,243). Tsubooka discloses the invention substantially as claimed. Tsubooka teaches a pair of swimming goggles comprising two eye cup portions 1 for protecting the user's eyes, and a belt 2,7 connected to the eye cup portion. The eye cup portion 1 is provided with a single projection 11B and the belt includes a corresponding single hole 12A or 12B at the first end of the belt so that the belt and eye cups can be connected together by inserting the projection into the corresponding hole of the belt. The belt 2,7 has a hard portion in the form of a fastening mechanism at a first end, the hard portion formed from polycarbonate (attested to as a known hard material in Applicant's specification) material, and the belt portion 2 is formed from comparably soft and stretchable elastomer. As noted above, Applicant's second end is illustrated in Figure 8 as a portion spaced from the first end and not necessarily at a distally opposed

portion of the belt. The first end of the belt is connected to an end of one of the two eye cup portions 1. However, Tsubooka does not teach a connecting/disconnecting mechanism provided on a second end of the belts for connecting and disconnecting an end of each of the belts together, with a soft portion at the second end, with the connecting/disconnecting mechanism further including means for adjusting a length of the belt connected to the connecting/disconnecting mechanism. Wu teaches goggles with a pair of belts 10 having a connecting/disconnecting mechanism 13 of a hook type (hook and loop soft material) at a second end. The complementary hook/loop arrangement allows for individual adjustment of each belt for customized fit to the wearer's head and also allows for each individual belt to be arranged such that a desired length of the belt can be exposed. Regarding claim 26, elastomeric material and polycarbonate material are both considered to be thermoplastic polymers. Thus, they are made from the same material. Regarding claim 28, the entire length of the pair of belts is predetermined by adjusting a length of each of the pair of belts between the connecting/disconnecting mechanism and the eyecup portion. It is noted that claim 28 does not recite additional structure for performing the claimed function. Accordingly, Tsubooka as modified by Wu is capable of performing the recited function and thus meets the claim. Therefore, it would have been obvious to provide Tsubooka with the pair of belts connecting by a mechanism as taught by Wu, so that each belt may be individually adjusted and so that the fit of the belts can be customized to the wearer's head size and shape.

7. Claims 2, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsubooka in view of Wu as applied to claim 1 above, and further in view of Lutz (U.S. 5,611,644). Tsubooka discloses the invention substantially as claimed. However, Tsubooka doesn't teach that a back portion of the belt which fits to the user's occipital region is made wider and side portions of the belt which fit to the user's temporal region are made narrower. Lutz teaches goggles with a strap 16 having a back belt portion 32 made wider and side belt portions 34 made narrower as shown in Figure 1. The wider portion provides a larger surface area to rest against the wearer's head, thus providing a larger frictional surface area. Therefore, it would have been obvious to form Tsubooka's belt with wider back portions and narrower side portions in order to provide a more secure belt structure.

8. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsubooka in view of Wu as applied to claim 29 above, and further in view of Runckel (U.S. 4,264,987). Tsubooka discloses the invention substantially as claimed. However, Tsubooka doesn't teach ends of the eye cup portions provided with single holes and first ends of the belt provided with projections corresponding to the single hole. Runckel teaches goggles 10 with a belt connected to the eye cup portions 12, 14 via a single hole 50 on respective ends of the eye cup portions and projections 98 on respective ends of the belt as shown in Figure 6. Applicant's specification does not provide criticality for providing the holes/projections on either of the eye cup or belt or unexpected results achieved when positioning the hole on the eye cup or on the belt or positioning the projection on the eye cup or belt. It has been held that a mere reversal of the essential

working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. Therefore, it would have been obvious to one of ordinary skill to provide Tsubooka's eye cup with the single hole and the belt with a single projection in order to accommodate a user's personal preference.

### ***Response to Arguments***

9. Applicant's arguments have been considered. Applicant submits that Tsubooka fails to teach a fastening mechanism equivalent to that claimed by Applicant, in that Tsubooka teaches two holes and two projections. The Examiner's position is that Tsubooka teaches a single projection as shown in Figure 5 and a single hole at an end of the belt portion. Applicant further submits that Tsubooka fails to teach a length adjustment mechanism for the belt provided on the connecting/disconnecting mechanism. The Examiner's position is that Tsubooka teaches a length adjustment mechanism on the coupling member of the fastening mechanism whereas Applicant's length adjustment member is provided the connecting/disconnecting mechanism. It is not clear what specific claim this argument is addressing. However, as noted above, Tsubooka's connecting/disconnecting hook-type mechanism includes the hook or loop means for adjusting a length of the belt. For example, the respective belt ends may be adjusted at their most distal points or they may be overlapped to a greater degree, thus modifying the length of the belt as viewed from end to end of each respective belt. As noted above, the second end has not been defined as the distal most portion of the belt and is illustrated in Figure 8 as being a portion of the belt spaced from the first end of



the belt. Applicant also submits that Wu's connecting/disconnecting mechanism does not meet the limitation of a buckle type of hook type. It is noted that the claims do not recite a specific structure for a hook type mechanism. Thus, hook and loop material meets this limitation of hook type.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch, may be reached at (571) 272-4996. The official and after final fax number for the organization where this application is assigned is (571) 273-8300.

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General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

January 9, 2008

A handwritten signature in black ink, appearing to read "K Moran", with a stylized flourish at the end.

Katherine Moran

Primary Examiner, AU 3765